

# EXHIBIT P

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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IN RE: ORAL PHENYLEPHRINE MARKETING AND	:	23-md-3089-BMC
SALES PRACTICES LITIGATION	:	
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THIS DOCUMENT APPLIES TO:	:	
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ALL CASES	:	
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**DECLARATION OF ALEXANDER E. BARNETT**

I, Alexander E. Barnett, declare as follows:

1. I am a partner in the law firm Cotchett, Pitre & McCarthy, LLP (“CPM”). I am a member in good standing of the bars of the State of New York and of the District of Columbia, and I am admitted to practice in this District. I am counsel for Plaintiff Greg Enriquez in the matter styled *Enriquez v. The Procter & Gamble Company, et al.*, No. 3:23-cv-05715 (N.D. Cal.), which has been transferred to this Court pursuant to the Conditional Transfer Order of December 7, 2023 (*In re: Oral Phenylephrine Marketing and Sales Practices Litigation*, MDL No. 3089 (J.P.M.L. December 7, 2023), Dkt. No. 339). I respectfully submit this Declaration in support of the Consensus Leadership Group’s proposed leadership structure for this multidistrict litigation and for my and my firm’s appointment as a member of the Plaintiffs Steering Committee.

**A. CPM Has Extensive Experience in Consumer Fraud Class Actions and Other Highly Complex Actions**

2. My firm, Cotchett, Pitre & McCarthy, LLP. (“CPM”) has been one of the nation’s leading plaintiffs’ law firms practicing complex litigation for more than fifty years and has recovered substantial damages and settlements for injured plaintiffs. CPM has built a practice and reputation, nationwide in scope, for prosecuting socially just actions. With offices in Burlingame,

California; Santa Monica, California; Seattle, Washington; and New York, New York, CPM has substantial resources in-house to devote to cases of national magnitude, such as this litigation. Those resources include three dozen attorneys, with vast experience in class actions, multidistrict litigation, and mass tort litigation, supported by more than fifty professionals, including paralegals, legal assistants, and investigators with extensive multidistrict litigation and class action experience. CPM has the organizational and technical expertise to handle complex cases and related discovery, as well as the financial resources to independently fund and litigate cases through trial and appeal. CPM has repeatedly demonstrated that commitment in many of the largest cases in the United States:

- In *In re American Continental Corporation/Lincoln Sav. and Loan Securities Litigation*, Nos. Civ 90–566 PHX–RMB to CIV 90–570 PHX–RMB, CIV 90–574 PHX–RMB and CIV 90–1270 PHX–RMB (D. Ariz.), CPM represented shareholder and bondholder victims of Charles Keating in a securities class action, and related insurance coverage litigation, including a lengthy jury trial tried by Senior Partner Joseph W. Cotchett. At the time, it was the largest jury verdict in American history—\$3.3 billion against Keating and others.
- In *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, No. 8:10-ml-02151-JVS (C.D. Cal.), CPM was co-lead counsel for the Economic Loss Committee in a class action against Toyota Motor Corporation and its U.S. sales and marketing arms, Toyota Motor Sales, U.S.A., Inc. and Toyota Motor North America, Inc. The multidistrict litigation involved over 200 lawsuits divided into two groups: those seeking losses on behalf of consumers and others who have lost value on their Toyota vehicles, and those seeking damages for people who have been injured or killed in a Toyota vehicle. The class action settled for \$1.3 billion in 2012.
- In *In re Automotive Parts Antitrust Litigation*, No. 2:12-md-02311 (E.D. Mich.), CPM served as co-lead counsel for end-payor plaintiffs against scores of automotive parts suppliers for allegedly engaging in massive conspiracies to fix the prices, rig the bids, and allocate the markets of various automotive parts sold to automobile manufacturers, next sold to automobile dealerships, and then sold to consumers and businesses. CPM and its co-lead counsel recovered over \$1.2 billion for the classes.
- In *People of the State of California v. Atlantic Richfield, et al.*, No. 1-00-cv-788657 (Santa Clara Cty. Super. Ct.), CPM represented the state of California alongside 10 California cities and counties in a public nuisance action. The six defendants included the largest historical manufacturers of lead-based paint and lead pigments in the country. After over a decade of litigation, the case went to trial and resulted in a judgment of \$1.15 billion in 2013.

- In *In re: Apple Inc. Device Performance Litigation*, No. 5:18-md-02827-EJD (N.D. Cal.), CPM, as co-lead counsel, represented a nationwide class action based on allegations that Apple issued software updates that slowed down the performance of certain iPhones. Apple agreed to pay a minimum of \$310 million and up to \$500 million in cash compensation.
- In *Precision Assocs., Inc. v. Panalpina World Transportation (Holding) Ltd.*, No. 1:08-cv-00042-BMCJG (E.D.N.Y.), CPM served as co-lead counsel for purchasers of freight forwarding services from freight forwarders who allegedly engaged in a conspiracy to unlawfully inflate, fix, raise, maintain, and/or artificially stabilize the prices of freight forwarding services. CPM and its co-lead counsel recovered approximately \$450 million for the class.
- In *re Medical Capital Securities Litigation*, No. 8:10-ml-02145-DOC-RNB (C.D. Cal.) CPM was co-lead counsel for noteholders who invested in Medical Capital, a receivable company that turned out to be a Ponzi scheme. After years of litigation, Bank of New York Mellon agreed to pay \$114 million to resolve the actions. Shortly thereafter, and on the eve of trial, Wells Fargo agreed to pay \$105 million dollars to resolve the actions. The combined \$219 million recovery in 2013 represents one of the largest recoveries against indenture trustees in United States history and one of the largest Ponzi recoveries in California and U.S. history.
- In *In re Transpacific Passenger Air Transportation Antitrust Litigation*, No. 3:07-cv-05634-CRB (N.D. Cal.), CPM served as co-lead counsel for purchasers of air transportation against 13 Asian and Oceanic airlines for allegedly engaging in a conspiracy to fix the prices of discount fares and fuel surcharges on long-haul passenger flights for transpacific routes. CPM and its co-lead counsel recovered over \$148 million for the classes.

3. Other representative cases in the consumer protection and/or economic justice field that I personally have worked on and/or continue to litigate where my firm serves as **lead** or **co-lead counsel** include, but are not limited to: *In re Domestic Airline Travel Antitrust Litigation*, No. 1:15-mc-01404 (D.D.C.) (representing plaintiffs alleging a conspiracy by commercial air passenger carriers in the United States to fix, raise, maintain, and/or stabilize prices for air passenger transportation services within the United States and achieving \$60 million in settlements thus far with litigation ongoing); *In Re: Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Practices and Products Liability Litigation*, No. 1:15-md-02627 (E.D. Va.) (representing classes of purchasers of laminate flooring pursuing claims for unfair and deceptive trade practices act violations, and breaches of warranty in connection with marketing

and sale of flooring materials and obtaining a settlement of \$36 million for class members—\$22 million in cash and \$14 million in store-credit vouchers), *In Re: HSBC Bank USA, N.A., Debit Card Overdraft Fee Litigation*, No. 2:13-md-02451 (E.D.N.Y.) (representing class of bank customers pursuing unfair trade practices act and covenant of good faith and fair dealing claims relating to overdraft charging practices and obtaining a settlement of \$32 million for class members); *In re Broiler Chicken Antitrust Litigation*, Case No. 1:16-cv-08637 (N.D. Ill.) (representing commercial indirect purchasers of broiler chickens alleging conspiracy by chicken producers to restrict production and fix prices of broiler chickens and obtaining settlements of \$103 million for class members thus far with litigation still ongoing). In these matters, I have undertaken the full range of litigation duties and have often been assigned lead or “first-chair” roles in the conduct of tasks, including such matters as the conduct of written and electronic discovery, the taking or defending of depositions, and drafting of motion papers.

4. Significantly, CPM has tried a number of class action cases. In *Massoyan v. HL Leasing, Inc.*, Case No. 09-CECG 01839 (Fresno Cty. Super. Ct.), CPM tried a Ponzi scheme case resulting in a jury verdict of \$46.5 million against two senior HL officers, while HL and related companies were held liable for \$114 million. Additionally, CPM secured a ground-breaking \$1.15 billion judgment against the lead paint industry after an almost two-month-long trial in Santa Clara Superior Court. *See People of the State of California v. Atlantic Richfield, et al.* Santa Clara Sup. Ct, Case No. 1-00-CV-788657 (“*Lead Paint*”). The *Lead Paint* verdict was the result of 13-years of hard-fought litigation, including multiple trips to the California Court of Appeal and the Supreme Court of California, and stands as the only successful trial against the lead paint industry for creating a public nuisance threatening the health and well-being of children. *See, e.g., County of Santa Clara et al. v. Atlantic Richfield, et al.*, 50 Cal.4th 35 (2010); *County of Santa Clara et*

*al. v. Atlantic Richfield, et al.*, 161 Cal.App.4th 1140 (2008); *County of Santa Clara et al. v. Atlantic Richfield, et al.*, 137 Cal.App.4th 292 (2006).

**B. The Proposed CPM Team Brings Substantial Experience, Competence, and Diversity to the Proposed Steering Committee**

**ALEXANDER BARNETT**

5. I received my B.A. in Economics from the University of Pennsylvania in December 1988 and my J.D. from St. John's University School of Law in June 1992, where I received a Jurisprudence Award for Legal Writing in 1990. I began my career as a litigator almost thirty years ago, and, for the majority of my career, I have focused on matters of economic justice, specializing in representing plaintiffs in complex class actions involving, among other things, allegations of unfair competition, consumer fraud, product defect, and antitrust law violations. Some of these matters are noted above in paragraph 3. I also have handled mass tort litigation, most frequently in matters that involved claims against pharmaceutical industry defendants. For five years in a row now (2019-2023), I have been named to the Lawdragon 500 Leading Plaintiff Financial Lawyer Guide, and I was among a team of counsel who received the American Antitrust Institute's "Outstanding Antitrust Litigation Achievement in Private Law Practice" for pursuit of plaintiffs' claims in *In re: Automotive Parts Antitrust Litigation*, No. 2:12-md-02311 (E.D. Mich.). For four years, I served as an officer (Secretary, Treasurer, Vice-President, and President) of COSAL ("Committee to Support the Antitrust Laws"), a non-profit organization dedicated to lobbying for strong antitrust laws and effective private enforcement. In addition, I have been asked to speak about class action practice, including at the First Annual National Class Actions Symposium, Osgoode Hall Law School, Toronto, Canada and the Third Annual Class Actions for Non-Class-Action Lawyers hosted by the Los Angeles County Bar Association.

**JOSEPH W. COTCHETT**

6. CPM Senior Partner Joseph W. Cotchett has been involved in a number of high profile and complex cases throughout his career and regularly lends his expertise to the CPM attorneys litigating such matters. As stated by *The National Law Journal*, Mr. Cotchett is considered by plaintiffs and defense attorneys alike to be one of the foremost trial lawyers in the country. He is the author of several books, including *Federal Courtroom Evidence*, *California Courtroom Evidence*, and other relevant practice and trial guides. In more than 50 years of practice, he has tried over 100 cases to verdict in jurisdictions across the country and settled hundreds more. As reported in the San Francisco/Los Angeles Daily Journal, he is “considered one of the best trial strategists in the state” and has built a career out of representing the underdog against powerful interests. He is known nationally as the lead trial lawyer for 23,000 plaintiffs in the Lincoln Savings & Loan Association/American Continental Corp. case in 1990 involving Charles Keating, his lawyers, accountants, and bankers. He won one of the then-largest jury verdicts in U.S. history at \$3.3 billion. Mr. Cotchett was the lead trial counsel in the Lead Paint case and tried the case with a team of attorneys.

**KARIN SWOPE**

7. Karin Swope is a Partner with Cotchett, Pitre & McCarthy, LLP’s where she represents clients in antitrust and consumer litigation, data privacy litigation, intellectual property litigation, securities litigation, environmental litigation and ERISA litigation. Karin has represented clients for more than 25 years in proceedings in state and federal courts across the country, as well as before the USPTO. She has been appointed as co-lead counsel and to steering committees in antitrust and consumer cases, including consumer protection cases against Apple and Intelius. She has represented consumers in protecting their privacy rights. Representative consumer privacy suits include *In re Google RTB Privacy Litigation* and *In re Zoom Video*

*Communications, Inc. Privacy Litigation*. For more than 15 years, Karin has served as an Adjunct Professor at Seattle University School of law, where she has taught the Intellectual Property Art Law Clinic. She formerly served as President of the Board of the Intellectual Property Section of the Washington State Bar Association and is currently a member of the Western Washington Federal Bar Association Local Rules Committee. She has presented and/or co-chaired numerous CLE's on topics ranging from E-Discovery practices to Intellectual Property. Following her graduation from Columbia Law School, Karin served as a law clerk to the Honorable John C. Coughenour in the U.S. District Court for the Western District of Washington, and as a law clerk to the Honorable Robert E. Cowen of the U.S. Court of Appeals, Third Circuit. She currently volunteers her time pro bono for the Volunteer Washington Lawyers for the Arts.

**ADAM J. ZAPALA**

8. Adam J. Zapala is the lead attorney in CPM's antitrust and unfair business practices group. Adam has extensive experience litigating highly complex consumer fraud, antitrust and other actions before federal district courts across the country. Adam has been repeatedly named as one of the top 30 antitrust attorneys in California and has had primary responsibility for prosecuting the highly complex actions *Auto Parts*, *Capacitors*, *Resistors*, *Transpacific*, *Domestic Air*, *Broilers*, and *Freight Forwarders*. Additionally, Adam served in a leadership role in a cutting-edge MDL privacy case, *In re Vizio Inc. Consumer Privacy Litigation*, Case No. 16-md-02693-JLS (C.D. Cal.), recovering \$17 million for the class, as well as attaining groundbreaking injunctive relief and significant business practice changes. Adam has been named to Super Lawyers Northern California Rising Stars list for 2014-2016 and as a Super Lawyer from 2018 to 2023.

**ELIZABETH T. CASTILLO**



9. Elizabeth T. Castillo is a partner in CPM's antitrust and unfair competition practice group. Her experience includes litigating direct and indirect purchaser class actions as well as international and domestic cartel matters. In 2022, she was personally appointed interim co-lead counsel in *In re Deere & Company Repair Services Antitrust Litigation*, MDL No. 3030, No. 3:22-cv-50188-IDJ (N.D. Ill.) and, in 2023, she was personally appointed to the leadership team in *In re ARC Airbag Inflators Products Liability Litigation*, MDL No. 3051, No. 1:22-md-03051-ELR (N.D. Ga.). Liz was included in the 2024 edition of the Best Lawyers: Ones to Watch® in America for her work in Antitrust Law. *The Daily Journal* named Liz to its "Top Antitrust Lawyers" list in 2022. She received the American Antitrust Institute's Outstanding Antitrust Litigation Achievement in Private Law Award in 2019 and Outstanding Antitrust Litigation Achievement by a Young Lawyer Award in 2016 for her work on *In re Automotive Parts Antitrust Litigation*, a multidistrict litigation in the Eastern District of Michigan against 73 defendant groups that settled for over \$1.2 billion. She was named a Northern California Super Lawyer from 2022 to 2023 and a Northern California Super Lawyers Rising Star from 2015 to 2021.

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10. Given my own experience and that of my firm, I understand that this litigation will require significant dedication of time and resources by counsel, and my firm and I are ready, willing, and able to commit my time and resources—and those of the firm—to this effort. Indeed, as noted, CPM, has a demonstrated willingness and ability to commit to time-consuming and resource-intensive litigation, including seeing matters successfully through trial and appeal.

11. In addition, I have a demonstrated ability to work cooperatively. The cases I have worked on throughout my career often are set within the context of multidistrict litigation, where I have worked and continue to work cooperatively with Plaintiffs' counsel and Defendants'

counsel alike. I note that this ability to work cooperatively is a trait that my firm, throughout its long history, has demonstrated, having served, repeatedly, as co-lead counsel in large, complex litigation in matters such as the that herein. I note, my firm and I are already working cooperatively and efficiently with co-counsel to litigate this very matter.

12. Finally, I note that as I am based in New York City, I can add value to the cost-efficient prosecution of this litigation by being able to attend to Court conferences and hearings without need to expend financial resources on travel. And, given that a number of the Defendants are located in New York or the nearby states of New Jersey and Pennsylvania, I will be able to attend in-person depositions of those Defendants and their witnesses in a cost-effective manner and with minimal travel.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 16, 2024

/s/Alexander E. Barnett  
Alexander E. Barnett